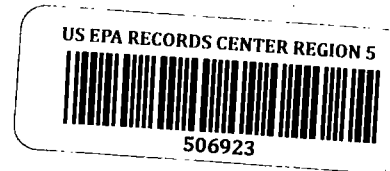


UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION



United States of America,

Plaintiff,

and

State of Minnesota, by its
Attorney General Warren
Spannaus, its Department of
Health, and its Pollution
Control Agency,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corp.;
Housing and Redevelopment
Authority of St. Louis Park;
Oak Park Village Associates;
Rustic Oaks Condominium, Inc.;
and Philips Investment Co.,

Defendants,

and

City of St. Louis Park,

Plaintiff-Intervenor,

vs.

Reilly Tar & Chemical Corp.,

Defendant,

and

City of Hopkins,

Plaintiff-Intervenor

vs.

Reilly Tar & Chemical Corp.,

Defendant.

Civ. File No. 4-80-469

AMENDED COMPLAINT IN
INTERVENTION OF THE
CITY OF ST. LOUIS PARK

Intervenor-plaintiff City of St. Louis Park for its claims against defendant Reilly Tar & Chemical Corporation states:

JURISDICTION AND VENUE

1. The City of St. Louis Park (hereafter City) is a municipal corporation duly organized and existing under the laws of the State of Minnesota.

2. Reilly Tar & Chemical Corporation (hereafter Reilly Tar) is a corporation established under the laws of the State of Indiana.

3. The matter in controversy exceeds the sum of \$10,000.00, exclusive of interest and costs, and this Court has independent subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1332 and 42 U.S.C. §§ 6972 and 6973.

4. The claims against Reilly Tar arise from acts committed in the course of its business in the State of Minnesota, City of St. Louis Park, at a time when it was registered to do business in this State. Venue is proper in this District pursuant to 28 U.S.C. §1391(a).

AVERMENTS APPLICABLE TO ALL CLAIMS

5. Reilly Tar was engaged in the business of distilling coal tar products and creosote impregnation of wood products in the State of Minnesota, City of St. Louis Park.

6. In the course of its business, Reilly Tar brought upon its land and stored coal tar, the products of coal tar distillation including creosote, and coal tar wastes, all of which are substances not naturally present with the land.

7. Reilly Tar discharged these coal tar products and distillation wastes onto its land and failed to undertake reasonable and adequate safeguards and methods of storage permitting the escape of these substances onto the land, contaminating the soil at its business site as well as adjacent soil.

8. The coal tar products and distillation wastes have moved from the surface of the soil downward to the underground waters resulting in the contamination of those waters with phenols and carcinogenic polynuclear aromatic hydrocarbon (PAH) compounds.

9. The contamination of the underground waters resulting from Reilly Tar's conduct poses an imminent threat to the source of drinking water of the residents of the City and consequently the public health, which threat is continually increasing in magnitude because of the natural movement of the underground waters laterally and horizontally.

10. Underground waters are a protectable natural resource of the State of Minnesota.

11. Reilly Tar by its conduct has polluted, impaired and destroyed this protectable natural resource of underground waters and the continuing nature of the harm is likely to further pollute, impair, and destroy that natural resource thereby materially adversely affecting the environment.

12. The present and likely future pollution, impairment, and destruction of the underground waters presents a threat to the public health of the residents of the City.

13. As a result of Reilly Tar's conduct, the City has incurred and will incur considerable expense in an amount that cannot yet be determined but which is estimated to be more than \$1,000,000.00. These expenses relate to the quantification of the scope of the damage, the determination of the appropriate remedial response, and the delay in undertaking public projects because of the underground water contamination.

14. On or about October 2, 1970, the State of Minnesota, through its Pollution Control Agency, and the City served a complaint in the District Court of the State of Minnesota against Reilly Tar. That original complaint raised claims of surface water and air pollution separate and distinct from the claims of underground water contamination now asserted. At the time of that previous action there was no known damage to underground waters as a result of Reilly Tar's conduct.

15. On February 23, 1971, Reilly Tar announced that it would close its operations in the City of St. Louis Park effective September, 1971. As of the latter date Reilly Tar did discontinue its processing operations, thereby essentially terminating the air and surface water discharges which had been the basis for the original complaint.

16. Following the announced termination of operations, Reilly Tar indicated its intent to offer its property for sale. The City became interested in purchasing the property as part of an urban renewal plan for the area. On April 14, 1972, the City agreed to purchase the property from Reilly Tar. A condition of the purchase agreement was the dismissal with

prejudice by the PCA and the City of the surface water and air pollution claims of the original complaint.

17. At that time, neither the City, the Minnesota Department of Health, nor the PCA were aware of an existing threat to the source of drinking water of the residents of St. Louis Park or of possible carcinogens in the ground waters because of Reilly Tar's operations. The City would not have purchased the property had it known those facts.

18. After certain delays in the federal funding for the purchase, a closing was finally scheduled on the property for June 19, 1973. As of the week prior to the closing, the PCA had yet to approve the cleanup plans for the site and so did not then want to execute a dismissal of the suit. Reilly Tar objected to a further delay of the closing and proposed to accept as a substitute, in lieu of the required dismissal by the PCA, a hold harmless agreement from the City against the surface water and air pollution claims of the PCA.

19. At that time, neither the City, nor the Minnesota Department of Health, nor the PCA were aware of the existence of possible carcinogens in the underground waters as a result of Reilly Tar's creosoting operations. The City would not have purchased the property nor given a hold harmless agreement had it been advised or known of those facts.

20. With the understanding based upon statements of the PCA that there were no significant cleanup problems on the site, the City gave the hold harmless agreement to Reilly Tar as a substitute for the dismissal expected to be given by the

PCA as soon as the details of the site cleanup plan had been agreed to by the PCA and the City. The intention of the City in giving the hold harmless agreement was to accomplish only that which Reilly Tar would have secured by receipt of the anticipated PCA dismissal of its original complaint: protection against liability for surface water and air pollution. Any broader indemnification would have been ultra vires the City, contrary to public policy and void. No additional consideration was paid by Reilly Tar for any indemnification going beyond the claims presented in the original complaint.

21. On June 21, 1973, the property was conveyed by quitclaim deed from the City to the Housing and Redevelopment Authority of St. Louis Park, Minnesota.

22. Neither the complaint of the United States of America, nor the complaints in intervention of the City and the PCA assert claims against Reilly Tar for surface water and air pollution.

23. Studies conducted by the Minnesota Department of Health since 1974 have now indicated the presence of certain carcinogenic substances in the underground water which present a threat to public health.

FIRST CLAIM

24. By letter dated May 11, 1981, in accordance with § 112(a) of the Comprehensive Environmental Responses, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9612(a), the City presented its claim against Reilly Tar for costs of response. By letter dated May 27, 1981, Reilly Tar denied

liability under the Act and has since taken no action to satisfy the City claims.

25. The City's costs of removal or remedial action and other necessary costs of response are consistent with the National Contingency Plan, 40 CFR Part 1510 (1980), and Reilly Tar is strictly liable under § 107(a) of CERCLA, 42 U.S.C. § 9607(a), for said costs.

SECOND CLAIM

26. Reilly Tar's disposal of hazardous waste presents an imminent and substantial endangerment to health and to the environment in violation of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973.

THIRD CLAIM

27. Reilly Tar has polluted, impaired and destroyed and continues by its inaction to pollute, impair and destroy a protectable natural resource of the State of Minnesota, underground waters, in violation of the Minnesota Environmental Rights Act, M.S.A. § 116B.01, et seq.

FOURTH CLAIM

28. Reilly Tar is strictly liable for the contamination of the underground waters and consequent threat to the public health resulting from its discharge and the escape into the soil of coal tar products and distillation wastes.

FIFTH CLAIM

29. Reilly Tar has materially damaged by contamination underground waters creating a threat to the public health of the residents of the City and is liable for the resulting public nuisance.

SIXTH CLAIM

30. The contamination of the underground waters is the result of Reilly Tar's negligence in the distillation of coal tar and the storage of coal tar products and waste.

SEVENTH CLAIM

31. The distillation of coal tar and storage of coal tar products and waste within the City of St. Louis Park, Minnesota, constituted an abnormally dangerous activity because of the presence of carcinogenic PAH substances which presented a serious risk of harm to the residents of the City.

32. Reilly Tar voluntarily engaged in this abnormally dangerous activity with knowledge, either actual or constructive, of the serious risk of harm and is strictly liable for the resulting contamination of the underground waters.

EIGHTH CLAIM

33. Reilly Tar has contaminated the underground waters and has materially damaged the City's vested property right to the use of those waters for the benefit of its residents.

NINTH CLAIM

34. This claim is for declaratory and supplemental relief brought pursuant to 28 U.S.C. §2201.

35. There exists between the City and Reilly Tar an actual, justiciable controversy with respect to the construction or validity of the hold harmless agreement between those parties in respect to which the City needs a declaration of rights by the Court.

36. Reilly Tar claims the hold harmless agreement is effective and is so broad as to protect it against claims arising from underground water contamination.

37. The City claims that the hold harmless agreement was intended to and does protect Reilly Tar only against claims for surface water and air pollution asserted by the PCA in the original complaint, which claims are not now asserted; that the hold harmless agreement does not protect Reilly Tar against claims for underground water contamination for that was not the intent of the parties, no consideration was received for such a broad indemnification, and, indeed, such a broad indemnification would be void as ultra vires the City and against public policy. Moreover, should the hold harmless agreement be so broad as to protect Reilly Tar against its contamination of underground waters, the agreement is void for reason that it was executed under mutual mistake as to material facts.

WHEREFORE, intervenor-plaintiff City of St. Louis Park prays for judgment as follows:

1. As to its First and Fourth through Eighth Claims, awarding judgment against Reilly Tar & Chemical in that amount found to compensate the City for expenses incurred and to be incurred as a result of the underground water contamination.

2. As to its Second and Third Claims, imposing such conditions upon Reilly Tar & Chemical Corporation as shall be proven necessary to protect against the further pollution, impairment, and destruction of underground waters and abate the continuing harm.

3. As to its Ninth Claim, construing the language of the hold harmless agreement and declaring that it does not protect Reilly Tar & Chemical Corporation against claims for underground water contamination.

4. For such other and further relief as is just and reasonable.

Dated: August 28, 1981.


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